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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED PARCEL SERVICE	)	
OF AMERICA, INC.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 1-08-cv-2902 TPG
v.	)	
	)	
SAMUEL Z. BROWN,	)	
	)	
Defendant.	)	

**PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM**

Plaintiff United Parcel Service of America, Inc. ("UPS"), for its answer and reply to the Counterclaim of Defendant, Samuel Z. Brown ("Defendant" or "Counterclaim Plaintiff"), denies each and every allegation contained therein except as hereinafter specifically set forth. UPS responds to each numbered paragraph of Defendant's alleged Counterclaim as follows:

1. UPS is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Counterclaim, and therefore denies same.

2. UPS admits the allegations of Paragraph 2 of the Counterclaim.

3. Upon information and belief, UPS admits that Counterclaim Plaintiff is a principal in the Law Offices of Samuel Z. Brown, and except as admitted herein, denies the remaining allegations set forth in Paragraph 3 of the Counterclaim.

4. UPS admits that UPS is the world's largest package distribution and courier company, and except as admitted herein, denies the remaining allegations set forth in Paragraph 4 of the Counterclaim.

5. Upon information and belief, UPS admits that after UPS had objected to Counterclaim Plaintiff's use of the designations "See What Brown Can Do For You," "See What Brown Can Find For You," and "The Brown Engine," and after UPS had lodged Opposition No. 91177634 in the United States Patent and Trademark Office opposing Counterclaim Plaintiff's application for federal registration of the designation "See What Brown Can Do For You," and after Counterclaim Plaintiff's application for federal registration was withdrawn, Counterclaim Plaintiff has made certain alterations to its website. To the extent any other alterations are asserted or alleged in Paragraph 5, UPS is without

knowledge or information sufficient to form a belief as to the truth of such allegations and, therefore, denies same.

6. UPS admits that its famous slogan WHAT CAN BROWN DO FOR YOU? is one of UPS' family of Brown trademarks that is at issue in this case, and except as admitted herein, denies the remaining allegations set forth in Paragraph 6.

7. UPS admits the allegations of Paragraph 7 of the Counterclaim.

8. UPS admits that Counterclaim Plaintiff withdrew the referenced trademark application after UPS lodged Opposition No. 91177634 and after the Complaint in this action was filed. UPS further admits that after UPS had objected to Counterclaim Plaintiff's use of the designations "See What Brown Can Do For You," "See What Brown Can Find For You" and "The Brown Engine," and after UPS had lodged Opposition No. 91177634 in the United States Patent and Trademark Office opposing Counterclaim Plaintiff's application for federal registration of the designation "See What Brown Can Do For You," and after Counterclaim Plaintiff's application for federal registration was withdrawn, Counterclaim Plaintiff has made certain alterations to its website. To the extent any other alterations are asserted or alleged in Paragraph 8, UPS is without knowledge or information sufficient to form a belief as to the truth of such allegations and, therefore, denies same.

9. UPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Counterclaim, and therefore denies same.

10. UPS denies the allegations of Paragraph 10 of the Counterclaim.

11. UPS incorporates by reference as if fully set forth herein its answers to Paragraphs 1 through 10, as set forth above.

12. UPS denies the allegations of Paragraph 12 of the Counterclaim.

13. UPS denies the allegations of Paragraph 13 of the Counterclaim.

14. Any allegation not expressly admitted herein is denied.

Plaintiff denies that Counterclaim Plaintiff is entitled to any of the relief set forth in his prayer.

#### FIRST DEFENSE

Counterclaim Plaintiff's alleged Counterclaim fails to state a claim against UPS upon which relief can be granted.

#### SECOND DEFENSE

Counterclaim Plaintiff's alleged Counterclaim is barred in whole or in part by Counterclaim Plaintiff's conduct as set forth in UPS's Complaint herein.

THIRD DEFENSE

Counterclaim Plaintiff's alleged Counterclaim and request for attorney's fees are barred in whole or in part because UPS's claims against Counterclaim Plaintiff are not malicious and have at all times been pursued by UPS in good faith.

Respectfully submitted, this 19th day of May, 2008.

KING & SPALDING LLP

/s/ Ethan Horwitz

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Attorneys for Plaintiff  
UNITED PARCEL SERVICE OF  
AMERICA, INC.

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing  
PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM was served this  
day via overnight delivery, in an envelope addressed to:

Samuel Z. Brown  
Law Offices of Samuel Z. Brown, P.C.  
205 E. Kennedy Blvd.  
Lakewood, NJ 08701

Dated: May 19, 2008.

/s/ Ethan Horwitz  
Ethan Horwitz